

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2638 Disciplinary Docket No. 3
Petitioner :
v. : No. 143 DB 2019
:
JOHN WILLIAM EDDY, : Attorney Registration No. 209046
Respondent :
: (Fayette County)

ORDER

PER CURIAM

AND NOW, this 4th day of June, 2021, upon consideration of the Report and Recommendations of the Disciplinary Board, John William Eddy is suspended from the Bar of this Commonwealth for a period of three years, retroactive to September 6, 2019. Respondent shall comply with all the provisions of Pa.R.D.E. 217 and pay costs to the Disciplinary Board. See Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 06/04/2021


Attest:
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 143 DB 2019
Petitioner	:	
	:	
v.	:	Attorney Registration No. 209046
	:	
JOHN WILLIAM EDDY,	:	
Respondent	:	(Fayette County)

REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania (“Board”) herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

By Order dated September 6, 2019, effective October 6, 2019, the Supreme Court of Pennsylvania suspended Respondent, John William Eddy, from the practice of law pursuant to Rule 208(f)(1), Pa.R.D.E., relating to emergency temporary suspension.

By Petition for Discipline filed on October 8, 2019, Petitioner, Office of Disciplinary Counsel, charged Respondent with violations of Rules of Professional Conduct 1.15(b), 1.15(c), 1.15(e), 1.16(d), 8.4(b) and 8.4(c) arising from allegations that Respondent misappropriated client funds. The parties stipulated to a one-time 20 day

extension for Respondent to file a response and on November 18, 2019, Respondent filed an Answer to the Petition for Discipline, wherein he admitted the majority of the allegations of misconduct.

Following a prehearing conference on February 10, 2020, a District IV Hearing Committee (“Committee”) conducted a hearing on March 12, 2020. The parties entered into a Stipulation, obviating the necessity for Petitioner to call any live witnesses at the hearing. Petitioner introduced thirteen exhibits, which were admitted into evidence without objection. Respondent, represented by counsel, called four witnesses and testified on his own behalf. He introduced six exhibits, which were admitted into evidence without objection. A continued hearing was held on July 7, 2020, to allow for the testimony of Respondent’s mental health expert. After Respondent’s witness testified, the record was closed.

On August 25, 2020, Petitioner filed a brief to the Committee, requesting that the Committee recommend to the Board that Respondent be disbarred. On September 30, 2020, Respondent filed a brief to the Committee, requesting that the Committee recommend to the Board that Respondent be suspended for a period of three years, with the suspension stayed in its entirety and a three year period of probation.

By Report filed on October 30, 2020, the Committee concluded that Respondent violated the rules as charged in the Petition for Discipline and found that Respondent met his burden to establish that he suffered from a psychiatric disorder that caused his misconduct, thereby affording mitigation of his disciplinary sanction. The Committee recommended that Respondent be suspended for a period of four years with credit for the period of his temporary suspension and the balance of the suspension

stayed in its entirety with probation and conditions, including continued psychiatric treatment and a practice monitor.

On November 19, 2020, Petitioner filed a Brief on Exceptions to the Committee's Report, asking that the Board reject the Committee's recommended discipline in favor of disbarment or, if the Board concludes that Respondent proved a causal connection between his mental illness and the misconduct, an actual suspension of at least two years. Respondent filed a Brief in Opposition to Exceptions on December 9, 2020, requesting that the Board adopt the Committee's recommendation.

The Board adjudicated this matter at the meeting on January 21, 2021.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg PA 17106-2485, is invested pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid rules.

2. Respondent, John William Eddy, was born in 1982 and was admitted to practice law in the Commonwealth of Pennsylvania in 2008. Respondent's attorney registration mailing address is 80 E. Main Street, Uniontown, Fayette County, PA 15401.

3. Respondent has no history of discipline.

4. Respondent is a third-generation lawyer. His father, John D. Eddy, Esquire, practices law in Pittsburgh and his mother, the Honorable Nancy D. Vernon, is a judge of the Court of Common Pleas of Fayette County. 3/12/20 N.T. 78.

5. In addition to stints as a part-time assistant district attorney in Fayette County and solicitor for the City of Uniontown, Respondent was a sole practitioner, with between 80 to 110 active cases and approximately 1,200 clients. 3/12/20 N.T. 106-108.

6. In early 2018, Respondent received a letter from the Disciplinary Board requesting an answer to a complaint made by a former client, Connie Smith, involving a landlord/tenant complaint in which Respondent represented Ms. Smith for a fee of \$300.00. 3/12/20 N.T. 114-115.

7. In responding to this complaint, and at the request of disciplinary counsel, Respondent produced records from his IOLTA account and admitted he had not maintained proper bookkeeping records or monthly reconciliations for individual clients, but attempted to recreate a ledger and provided authorizations to disciplinary counsel for access to the account. *Id.*

8. It was discovered that over a two year period of time, there were several times the account was out of trust with regard to eight different clients and, as of July 9, 2019, Respondent was entrusted with \$74,113.58 on behalf of these clients. 3/12/20 N.T. 11, 13; Petitioner's Exhibit ("PE") 1, ¶¶ 10, 14, 22, 23, 24-27, 29, 31, 40, 42, 25, 49, 55, 57, 59, 65.

9. Respondent admitted to these infractions and acknowledged that he used the entrusted funds for his own purposes. 3/12/20 N.T. 53-54, 89-90.

10. By Order of the Supreme Court of Pennsylvania dated September 6, 2019, effective October 6, 2019, Respondent was placed on emergency temporary suspension pursuant to Pa.R.D.E. 208(f)(1). PE 12.

11. In 2016, Respondent was retained by Cheryl Pritcher, the Executrix of the Estate of Daniel Ferguson, to represent the Estate concerning a personal injury claim involving a motor vehicle collision for a fee of one-third of any recovery. 3/12/20 N.T. 18-21; PE 1, ¶¶ 4-10.

12. Respondent settled the survival claim prior to June 22, 2016 for the policy limits of One Hundred Thousand (\$100,000.00) Dollars and deposited that sum into his IOLTA account on June 27, 2016. *Id.*

13. On July 5, 2016, Respondent dispersed to himself the fees and costs owed to him regarding settlement of the case. 3/12/20 N.T. 18-19; PE 1, ¶ 8.

14. On August 24, 2016, Respondent disbursed \$15,000.00 of the funds to the Executrix, Cheryl Pritcher, as an Executrix fee. 3/12/20 N.T. 18-19; PE 1, ¶ 9.

15. As of August 26, 2016, Respondent was entrusted with \$51,156.89 on behalf of the Estate of Daniel Ferguson. 3/12/20 N.T. 19-20; PE 1, ¶ 10.

16. There was a dispute regarding the amount of estate taxes owed by Mr. Ferguson's heir, and Respondent issued a payment of approximately half the money due to the beneficiary during this pending dispute. 3/12/20 N.T. 20.

17. On August 2, 2019, Respondent sent a check to the beneficiary of the Estate for the remaining amount of \$26,156.89. 3/12/20 N.T. 21.

18. In August 2016, Respondent represented a client, Stephanie Sharp, in a divorce and received a check in the amount of \$5,798.27 from the proceeds of the sale of the marital home. 3/12/20 N.T. 22-23.

19. Respondent agreed to take on this case for a small retainer of \$200, and then to defer payment until after the closing and sale of the house as the client had no way of paying for his services. 3/12/20 N.T. 23-24.

20. Of that sum, Respondent's fee was \$1,798.00 and the client was to receive the remaining amount of approximately \$4,000.00. *Id.*

21. On September 9, 2016, Respondent issued a check made payable to himself in the amount of \$1,798.27 as fees and, as of September 9, 2016, was entrusted with the remaining \$4,000.00 on behalf of Ms. Sharp. 3/12/20 N.T. 24.

22. Respondent testified that had a memory of paying Ms. Sharp, but there was no evidence of such payment. *Id.*

23. On the date of the hearing, Respondent paid the sum of \$4,000.00 to Ms. Sharp. 3/12/20 N.T. 25.

24. Prior to November 2016, Respondent represented client John Davidson, who was injured in an automobile accident. 3/12/20 N.T. 26.

25. Respondent settled Mr. Davidson's claim and received a check on November 17, 2016 in the amount of \$65,000.00, which Respondent deposited into his IOLTA account. Respondent received an additional \$10,000.00 from a second insurance policy. As of November 21, 2016, Respondent had a total of \$75,000.00 in his IOLTA account representing the total settlement proceeds from two insurance settlements. 3/12/20 N.T. 26-29; PE 1, ¶¶ 17-18.

26. On November 23, 2016, Respondent issued a check made payable to Mr. Davidson in the amount of \$33,333.34 and issued himself a payment of \$21,666.66 representing his fees on the \$65,000.00 insurance settlement. 3/12/20 N.T. 28-30; PE 1, ¶¶ 19-20.

27. On January 6, 2017, Respondent issued a payment in the amount of \$7,537.00 to Mr. Davidson. 3/12/20 N.T. 29-30; PE 1, ¶ 21.

28. On January 6, 2017, Respondent remained entrusted with \$2,463.00 (either for repayment of medical liens or to pay two experts, Dr. Craig Smith and Dr. Gosai). 3/12/20 N.T. 30-31; PE 1, ¶ 22.

29. These amounts were repaid and the difference refunded to the client on July 3, 2019. 3/12/20 N.T. 28-29.

30. On October 18, 2016, Respondent was entrusted with \$2,187 by clients Connie Smith and Steve Kerik with regard to a landlord-tenant dispute (“Smith/Kerik matter”). 3/12/20 N.T. 31-32; PE 1, ¶ 15.

31. Respondent posted an appeal bond for \$339.66, leaving \$1,847.34 in trust for the Smith/Kerik matter.

32. As of the hearing, the Smith/Kerik matter was on appeal. 3/21/20 N.T. 32-37. Based upon conversations between the opposing party in the appeal and Petitioner, the case was settled and the amount was going to be returned to the clients. 3/12/20 N.T. 37-38.

33. In October 2017, Respondent received a settlement check for a client in the amount of \$15,000, out of which he paid himself \$6,109.50 for fees and costs. 3/12/20 N.T. 38-40; PE 1, 32-34.

34. The remaining amount, \$8,490.50, was being held because of liens that exceeded the settlement amount. This amount was paid to the client in September of 2018 after the client agreed to assume the risk of further action by the lien holders. 3/12/20 N.T. 40-41.

35. In December 2017, Respondent deposited \$14,912.50 in his escrow account from a client, Lucas McChesney, for the purchase of real estate from two individuals. 3/12/20 N.T. 41-42; PE 1, ¶ 35.

36. Respondent issued himself a check in the amount of \$912 for fees and costs and was reimbursed an additional \$140.50 in costs. The remaining amount of \$13,860 was disbursed in two checks (\$6,930 each) to the sellers. 3/12/20 N.T. 42; PE 1, ¶¶ 37-39.

37. In February 2018, Respondent deposited \$42,537.50 into his IOLTA Account for the purchase of property by clients Homer and Kelli Yeardie. 3/12/20 N.T. 42-43; PE 1 43.

38. A dispute arose between the seller and the Yeardies, necessitating further legal actions, but was eventually resolved. 3/12/20 N.T. 43-35.

39. In June 2018, Respondent was retained to administer the Estate of Diane Mongalier and deposited \$42,953.72 in his escrow account. 3/12/20 N.T. 46-47.

40. The Estate was contested and a lien existed from the Pennsylvania Department of Public Welfare in the amount of \$84,000. 3/12/20 N.T. 47-49. 3/12/20 N.T. 47-49.

41. As of April 2019, separate counsel had taken over the case and \$54,981.33 representing the initial amount less \$5,000 advanced to the client, was given to new counsel. 3/12/20 N.T. 50-51.

42. As of March 4, 2019, the balance in Respondent's IOLTA Account was \$164.69, which was \$73,948.89 less than his total entrustments. 3/12/20 N.T. 11, 13; PE 1, ¶ 58.

43. As of July 9, 2019, Respondent remained entrusted with at least \$74,113.58 of client money (not including the \$4,000 in dispute in the Sharp matter) and had not yet delivered any of those funds to those entitled to receive them. PE 1, ¶ 65.

44. Respondent misappropriated at least \$73,948.89 in entrusted funds for his own use. 3/12/20 N.T. 11, 13, 53-54, 119; PE 1 ¶ 59.

45. Respondent made full restitution to his clients. Respondent made reimbursement after Petitioner's investigation in this matter commenced. 3/12/20 N.T. 11, 13, 25; PE 1, ¶ 67.

46. Throughout most of his life, Respondent has struggled with mental health issues, including depression. 7/720 N.T. 139.

47. Respondent received treatment at Chestnut Ridge Counseling in Morgantown, West Virginia from 2007 until 2012, under the care of a psychiatrist, Diane Trumbell, which included prescription medications. 3/12/20 N.T. 89.

48. In 2012, Dr. Trumbell retired and Respondent decided not to continue treatment or take medication, which he testified was "[t]he biggest mistake I ever made in my life." 3/12/20 N.T. 89-90.

49. Sometime in 2015, Respondent developed a substance abuse problem, which started with prescription medication he received following a surgical procedure. 3/12/20 N.T. 90.

50. By 2017, Respondent had moved from using opioid pills to heroin and cocaine and admitted that he was using drugs on a daily basis. 3/12/20 N.T. 91.

51. Between 2017 and early 2019, Respondent occasionally treated for narcotics withdrawal and for his mental conditions at WVU Ruby Memorial Hospital,

Chestnut Ridge, Western Psychiatric Institute and Clinic and Gateway Rehabilitation. These treatments included several admissions. 3/12/20 N.T. 92-96; 7/7/20 N.T. 139-140.

52. Respondent described his prior attempts at treatment as “unsuccessful” in that he never achieved complete sobriety. 3/12/20 N.T. 92, 93.

53. Respondent testified that during the time frame 2017 through 2019, he became careless with his IOLTA account and client funds and, due to his addiction, his records fell into a state of total disarray. 3/12/20 N.T. 97, 103, 108, 115-116.

54. Respondent was arrested in June 2019 by a Pennsylvania State Police Trooper after purchasing cocaine and was charged with drug-related and motor-vehicle related crimes, including driving under the influence. 3/12/20 N.T. 112-113; PE 13. That matter was pending at the time of the disciplinary hearing.

55. Respondent testified to a period of sobriety from July 2019 through September 2019, but following the temporary suspension of his law license, Respondent relapsed into drug use. 3/12/20 N.T. 97.

56. In October 2019, Respondent admitted himself to the inpatient psychiatric wing at Saint Clair Hospital in Pittsburgh and was thereafter transferred to inpatient rehabilitation at Silvermist rehabilitation facility in Butler County, Pennsylvania, where he remained for approximately 35 days, until the first week of December 2019. 3/12/20 N.T. 100-103, 126; 7/7/20 N.T. 140.

57. Respondent’s diagnosis while at Silvermist was opioid dependency, cocaine dependency, anxiety disorder unspecified and recurrent major depression. *Id.*

58. Respondent presented the credible expert testimony of Dr. Bruce A. Wright, a board-certified psychiatrist. 7/7/20 N.T. 135.

59. Beginning in April 2019 through his admission to Saint Clair and following his discharge from Silvermist, Respondent has treated with Dr. Wright. 7/7/20 N.T. 142-143.

60. Upon first meeting with Respondent, Dr. Wright compiled a thorough history, which included information regarding Respondent's family, background, education, medical history and psychiatric history. 7/7/20 N.T. 139.

61. Dr. Wright credibly testified that Respondent has suffered from long-standing psychiatric problems since childhood, which include recurrent episodes of major depression as well as anxiety, obsessive compulsive behavior and recurrent substance abuse. 7/7/20 N.T. 139.

62. According to Dr. Wright, the depression and anxiety suffered by Respondent produced vegetative symptoms, problems with sleep, appetite, energy, attention and concentration, as well as affecting motivation and initiative. 7/7/20 N.T. 141.

63. Dr. Wright understood that Respondent had taken funds belonging to clients, which formed the basis of his disciplinary problems. 7/7/20 N.T. 138.

64. Dr. Wright credibly testified that it is his opinion, within a reasonable degree of medical certainty, that there is a causal relationship between Respondent's diagnosed conditions of depression, anxiety, and substance abuse and his professional misconduct. 7/7/20 N.T. 143-144.

65. Dr. Wright testified that when Respondent was depressed, he had problems with initiative and motivation, attention, concentration and energy. These problems caused his inability to pay attention and focus on his IOLTA account. "He didn't focus, he didn't pay attention, he didn't see a need to maintain those accounts." 7/7/20 N.T.144.

66. Dr. Wright testified that Respondent's status deteriorated in the fall of 2019 with significant substance abuse, which Dr. Wright attributed in part to Respondent's temporary license suspension. 7/7/20 N.T. 144 -145.

67. Since Respondent's discharge from Silvermist, Respondent has been abstinent from any substance and his depression and anxiety have improved. 7/7/20 N.T. 142, 143, 146.

68. Dr. Wright testified that Respondent is doing "remarkably well" compared to where he had been in the fall of 2019, but admitted that Respondent is not under any pressure from an active practice of law. 7/7/20 N.T. 149-50.

69. Respondent called three character witnesses to testify at the hearing. The character witnesses were:

a. James T. Davis, Esquire – a practitioner of 44 years in Fayette County who attested to Respondent's excellent reputation in the community for integrity and honesty and his intelligence and high legal acumen (3/12/20 N.T. 59-64);

b. Michelle Kelley, Esquire – a practitioner of 18 years in Fayette County who testified to Respondent's excellent reputation in the community for integrity and honesty, professionalism, community involvement and positive changes in Respondent following his rehabilitation at Silvermist (3/12/20 N.T. 66-72);

c. Reverend James Gear – Minister of the Trinity United Presbyterian Church in Uniontown who testified that Respondent has been very involved in the church, including as a Deacon, Elder of Session, choir member, and head usher (3/12/20 N.T. 75-78).

70. Respondent's character witnesses credibly testified on his behalf.

71. John D. Eddy, Esquire, credibly testified on Respondent's behalf. Mr. Eddy is Respondent's father and has practiced law in Pennsylvania for nearly 40 years. 3/12/20 N.T. 78.

72. Mr. Eddy testified to his belief that Respondent took on too many cases in his solo practice, in addition to his responsibilities as an assistant district attorney and solicitor, and from Mr. Eddy's perspective, it took a toll on Respondent. 3/12/20 N.T. 80-81.

73. Mr. Eddy became aware of Respondent's drug addiction when Respondent sought treatment at various rehabilitation facilities during 2017 through 2019. 3/12/20 N.T. 81-82.

74. Mr. Eddy observed Respondent during the disciplinary proceeding that led to his emergency temporary suspension and saw his son experiencing extreme stress, with emotional and physical problems. 3/12/20 N.T. 81-84.

75. Following Respondent's treatment at Silvermist, Mr. Eddy has observed his son to be much more focused, articulate and organized. 3/12/20 N.T. 84-85.

76. Brent Peck, Esquire is a practitioner in Fayette County and wrote a character letter on Respondent's behalf, attesting to Respondent's recovery and sobriety, and that Respondent "can and will be an asset to the profession as an educated, qualified, and astute practitioner." RE F.

77. Respondent credibly testified on his own behalf.

78. Respondent related his history of mental health problems and his evolving, increasing reliance on illegal drugs, interspersed with periods of rehabilitation and abstinence. 3/12/20 N.T. 88-97.

79. In October 2019, six months after commencing treatment with Dr. Wright, and around the time of his temporary suspension from the practice of law, Respondent relapsed into drug use. He testified that his mother saw him preparing to use cocaine and:

[A]t that point, I just decided...I'm not going to live like this another day, not another day...there was part of me that was still in there that wasn't crushed by the drugs that were—that knew what was going on and was screaming from the inside out. What have I become?...I am everything I hate, and I just decided I'm either not going to do this or I'm not going to live, because I'm not going to live like this anymore.

3/12/20 N.T. 98-99.

80. Respondent's experience prompted him to admit himself to Saint Clair Hospital, under Dr. Wright's care, and thereafter enter an inpatient treatment program at Silvermist. 3/12/20 N.T. 98-100.

81. Respondent has not used illegal drugs since October 23, 2019. 3/12/20 N.T. 104.

82. Respondent attends Alcoholics Anonymous or Narcotics Anonymous meetings a couple of times a week. 3/12/20 N.T. 103-104.

83. Respondent attends outpatient therapy at Harmony Recovery in Morgantown, WV on a weekly basis, where he participates in a one hour therapy session and undergoes urinalysis. 3/12/20 N.T. 104.

84. Respondent meets with Dr. Wright on a biweekly basis for therapy. *Id.*

85. Respondent takes the medications Paxil, Wellbutrin and Seroquel, as prescribed by Dr. Wright. 7/7/20 N.T. 142.

86. Respondent intends to continue with his course of treatment for as long as necessary. *Id.*

87. As far as returning to the practice of law, Respondent believes he has addressed his sobriety and mental health problems and has considered joining other lawyers in a practice or having his father watch over Respondent's practice for a while. 3/12/20 N.T. 123-214.

88. Respondent expressed sincere and genuine remorse and was upset, embarrassed, and ashamed of his misconduct.

89. Respondent accepted responsibility for his actions that led to these disciplinary proceedings and admitted that, despite the embarrassment and shame, he was thankful that this occurred sooner rather than later so that he could begin his recovery. 3/12/20 N.T. 98-105.

90. Respondent testified that in his law practice, he had always attempted to make services affordable to his clients, as people in his Fayette County community are poor and need services, and he would never have dreamed of harming a client. 3/12/20 N.T. 115-16.

91. Respondent accepts that his misconduct is something he has to live with "for the rest of my life" and in reflecting in his "right mind," states that what he did was "appalling." 3/12/20 N.T. 116.

92. Respondent was not criminally charged in connection with his IOLTA account conversions.

III. CONCLUSIONS OF LAW

1. By his conduct as set forth above, Respondent violated the following

Rules of Professional Conduct:

a. RPC 1.15(b) – A lawyer shall hold all Rule 1.15 funds and property separate from the lawyer’s own property. Such property shall be identified and appropriately safeguarded;

b. RPC 1.15(e) – Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, including but not limited to, Rule 1.15 funds that the client or third person is entitled to receive and, upon request by the third person, shall promptly render a full accounting regarding the property; Provided, however, that the deliver, accounting and disclosure of all Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of Fiduciary admission, confidentiality, notice and accounting applicable to Fiduciary entrustment;

c. RPC 1.15(f) – When in possession of funds or property in which two or more persons, one of whom may be a lawyer, claim an interest, the funds or property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or property, including Rule 1.15 funds, as to which the interests are not in dispute;

d. RPC 1.16(d) – Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client’s interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law;

e. RPC 8.4 (b) – It is professional misconduct for a lawyer to: commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects; and

f. RPC 8.4 (c) – It is professional misconduct for a lawyer to: engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

2. Respondent established by clear and convincing evidence that his psychiatric disorder caused his misconduct. ***Office of Disciplinary Counsel v. Seymour Braun***, 553 A.2d 894 (Pa. 1989).

IV. DISCUSSION

This matter is before the Board for consideration following the issuance of the Committee's Report and recommendation for a stayed suspension and probation, Petitioner's exceptions thereto and Respondent's opposition to Petitioner's exceptions.

Petitioner bears the burden of proving ethical misconduct by a preponderance of clear and satisfactory evidence. ***Office of Disciplinary Counsel v. John Grigsby***, 425 A.2d 730, 732 (Pa. 1981). Based on this record, we conclude that Petitioner met its burden of proving that Respondent violated Rules of Professional Conduct 1.15(b), 1.15(e), 1.15(f), 1.16(d), 8.4(b) and 8.4(c), and for the reasons stated herein, we recommend that Respondent be suspended from the practice of law for a period of three years, retroactive to the date of Respondent's temporary suspension on September 6, 2019.

The record established that Respondent, over a period of approximately two years, failed to safeguard entrusted client funds, failed to deliver funds to clients, and misappropriated funds of eight separate clients. On three occasions, Respondent emptied his IOLTA account, reducing the balance in the account to virtually nothing, then deposited into the account additional entrusted funds from other clients to build up the balance in the account, only to drain it again. By repeated payments for his own benefit, Respondent misappropriated approximately \$74,000, as evidenced by deficiencies in his

IOLTA account. Respondent reimbursed the monies in full. These facts are not in dispute. What is at issue in this matter is the appropriate quantum of discipline to address Respondent's misconduct, after considering the totality of the circumstances, including aggravating and mitigating factors.

We start our analysis by considering that there is no formulistic approach or per se discipline in Pennsylvania, thereby allowing the Court to retain its discretion to apply fact-specific considerations to the analysis of appropriate discipline. **Office of Disciplinary Counsel v. Robert Lucarini**, 472 A.2d 186 (Pa, 1983). Nevertheless, misappropriation of entrusted funds is a serious offense and absent mitigating circumstances, the Court has imposed disbarment to address the egregious breach of trust occasioned by such misconduct. **Office of Disciplinary Counsel v. Peter Quigley**, 161 A.3d 800 (Pa. 2017); **Office of Disciplinary Counsel v. Robert Monsour**, 701 A.2d 556 (Pa. 1997); **Office of Disciplinary Counsel v. Suber Lewis**, 426 A.2d 1138 (Pa. 1981). See also **Office of Disciplinary Counsel v. Anthony S. Rachuba, IV**, No. 45 DB 2019 (D. Bd. Rpt. 3/10/20) (S. Ct. Order 6/3/20); **Office of Disciplinary Counsel v. John Kelvin Conner**, No. 29 DB 2018 (D. Bd. Rpt. 4/2/19) (S. Ct. Order 6/20/19).

Respondent strongly advocates for a lesser discipline than disbarment on the basis that his mental illness and substance abuse issues caused his misappropriation. In order for such factors to be considered in mitigation, Respondent must establish by clear and convincing evidence that they were causal factors in his misconduct. **Office of Disciplinary Counsel v. Seymour Braun**, 533 A.2d 894 (Pa. 1989). In **Braun**, the Court imposed a two year period of suspension on the respondent-attorney for his conversion of entrusted funds, after concluding that his psychiatric disorder caused his misconduct. Here, the Committee concluded that Respondent met his burden under **Braun** and

mitigation of discipline was appropriate. Petitioner takes exception to the Committee's conclusion.

Upon review of the expert testimony and report of Dr. Wright and Respondent's testimony, we conclude that Respondent established by clear and convincing evidence that he suffered from psychiatric disorders which caused his misconduct. Dr. Wright's testimony was credible, established a causal link between Respondent's mental disorders and his misconduct, and was not refuted by any evidence to the contrary.

The evidence established that Respondent has suffered from psychiatric disorders since childhood and between 2007 and 2012 treated with a psychiatrist. After his medical provider retired, Respondent of his own volition stopped treatment, a decision Respondent candidly admitted was a mistake. Following a surgical procedure in approximately 2015 after which he was prescribed Vicodin for pain management, Respondent became addicted to opioids and by 2017 had progressed to cocaine and heroin. The record established a downward spiral of daily drug use punctuated by occasional stints in rehabilitation programs between 2017 and 2019, culminating in Respondent's arrest for drug-related offenses on June 26, 2019. Those charges remain outstanding and are not under consideration in this proceeding.

Dr. Wright, a board-certified psychiatrist, first met with Respondent in April 2019 and assumed his care at that time. Dr. Wright compiled a thorough history of Respondent's background, which revealed Respondent's longstanding psychiatric problems including recurrent episodes of major depression, as well as anxiety, obsessive compulsive disorder and recurrent substance abuse. The early months of Respondent's treatment were not smooth, as Respondent was arrested in June 2019, experienced a

period of abstinence and relapsed into drug use in October 2019, around the time of Respondent's temporary suspension from the practice of law.

In his testimony about the relapse, Respondent described how his mother walked in on him as he was about to use cocaine. This experience proved so unsettling that it prompted Respondent to reevaluate his life and once again seek treatment for his problems. Respondent admitted himself to Saint Clair Hospital under the care of Dr. Wright and after hospitalization, entered a rehabilitation program at Silvermist. Upon successful completion of the Silvermist program, Respondent resumed treatment with Dr. Wright on a biweekly basis and takes the prescriptions Paxil, Wellbutrin and Seroquel. In addition, Respondent attends a weekly outpatient program at Harmony Recovery, where he undergoes urinalysis, and also attends Alcoholics Anonymous or Narcotics Anonymous meetings a couple of times a week. Respondent has been sober since October 23, 2019. He credibly testified to his intent to maintain treatment for as long as necessary.

Dr. Wright offered credible testimony at the hearing that Respondent's diagnosed psychiatric disorders caused Respondent to have vegetative symptoms, problems with sleep, appetite, energy, attention and concentration, which in turn negatively impacted Respondent's motivation and initiative. Dr. Wright, who understood the basis of Respondent's disciplinary issues to be his misappropriation of client funds, credibly testified that Respondent's diagnosed psychiatric disorders caused Respondent to engage in the underlying misconduct, as his inattention and lack of focus impacted the proper maintenance of his IOLTA account.

We are satisfied on this record that Respondent met the **Braun** standard for mitigation.

In addition to the evidence of Respondent's psychiatric disorders, Respondent provided other recognized factors for mitigation. Respondent expressed genuine remorse and took responsibility for his misconduct. Importantly, Respondent recognized that his actions harmed his clients, for which Respondent was extremely sorry. Respondent fully acknowledged his culpability and understands the need for discipline in this matter. The record established that Respondent was thoroughly contrite and ashamed, candidly admitting he has to live with "the appalling nature" of his actions for the rest of his life. Respondent, who was admitted to practice in 2008, has no record of discipline in the approximately nine years that he practiced law prior to his misconduct.

At the disciplinary hearing, three witnesses from Respondent's community, two lawyers and a minister, offered credible testimony as to Respondent's excellent reputation for honesty and integrity in the community. These witnesses, who were aware of Respondent's addiction problems, described Respondent's strong work ethic and active involvement in the community, as well as the positive changes they have seen in Respondent as a result of his sobriety. Respondent's father, a longstanding Pennsylvania lawyer, described quite clearly Respondent's shaky physical and emotional state prior to his admission to Saint Clair Hospital and Silvermist, and testified to the positive changes he has observed in Respondent since his rehabilitation at Silvermist in the late fall of 2019. In addition to these witnesses, Respondent presented one character letter in support of his good reputation in the community as a person of integrity and a competent attorney. The record established that community members are aware of Respondent's struggles with addiction, and despite this knowledge, Respondent is held in high-regard and is a respected member of the community.

Restitution may be given weight in mitigation. See **Office of Disciplinary Counsel v. Anthony Charles Mengine**, No. 66 DB 2017 (D. Bd. 9/24/2019) (S. Ct. Order 11/26/2019). Here, Petitioner contends that the timing of Respondent's restitution, which occurred after the commencement of the disciplinary investigation in this matter, prevents his act of restitution from consideration as a mitigating factor. We agree that Respondent's restitution in this instance is less weighty due to the timing. Still, in comparison to cases where the respondent-attorney did not make any restitution, we consider that Respondent's clients were made whole. See **Office of Disciplinary Counsel v. Joseph Q. Mirarchi**, No. 56 DB 2016 (D. Bd. Rpt. 5/21/2018) (S. Ct. Order 3/18/2019).

Based on the compelling mitigating factors of a psychiatric disorder, genuine expressions of remorse, lack of prior discipline and character evidence, we conclude that the instant matter is distinguishable from those matters where disbarment was imposed. In the **Monsour** and **Quigley** matters, the respondent-attorneys did not establish mitigation pursuant to **Braun**. Similarly, the absence of any compelling mitigation in **Rachuba** and **Conner** informed the Board's recommendations of disbarment in those matters, which were adopted by the Court.

Having concluded that the facts and circumstances do not warrant disbarment, we turn to the question of the appropriate sanction to address Respondent's ethical violations.

"The primary purpose of our system of lawyer discipline is to protect the public from unfit attorneys and to maintain the integrity of the legal system." **Office of Disciplinary Counsel v. John Keller**, 506 A.2d 872, 875 (Pa. 1986). In determining the

appropriate discipline, the Board examines precedent for the purpose of examining “the respondent’s conduct against other similar transgressions.” ***In re Anonymous No. 56 DB 1994 (Linda Gertrude Roback)***, 29 Pa. D. & C. 4th 398, 406 (1995). The Board considers any aggravating and mitigating circumstances. ***In re Anonymous No. 35 DB 1988 (Melvin V. Richardson)***, 8 Pa. D. & C. 4th 344, 355 (1990).

Prior cases of a similar nature establish that a lengthy suspension is required to address Respondent’s misappropriation of entrusted funds. The case law reveals suspensions ranging up to five years have been imposed, with the term of suspension driven by the specific aggravating and mitigating facts. See, ***Office of Disciplinary Counsel v. George J. Kanuck***, 535 A.2d 69 (Pa. 1987) (The Court imposed a five year suspension where the respondent-attorney misappropriated client funds and made restitution prior to the disciplinary inquiry); ***Office of Disciplinary Counsel v. James Barnett Gefsky***, No. 162 DB 2009 (D. Bd. Rpt. 1/26/2011) (S. Ct. Order 5/16/2011) (five year suspension for misappropriation of entrusted client funds of two clients in the total amount of \$75,000, partial reimbursement, prior record of private discipline); ***Office of Disciplinary Counsel v. Heather L. Harbaugh***, No. 192 DB 2005 (S. Ct. Order 1/30/2007) (four year suspension on consent, retroactive to the date of the temporary suspension for misappropriation of approximately \$34,000 in entrusted client funds, conversions took place in twenty separate increments, failure to communicate with clients and lack of diligence, no prior record of discipline, restitution occurred after commencement of disciplinary inquiry); ***Office of Disciplinary Counsel v. James Robert Michael***, No. 48 DB 2008 (D. Bd. Rpt. 12/18/2009) (S. Ct. Order 4/8/2010) (three year suspension retroactive to the date of the temporary suspension for misappropriation of at least \$100,000 of entrusted funds, the respondent-attorney established he suffered

from a psychiatric disorder that caused his misconduct and met the **Braun** standard for mitigation, Court rejected Board's recommendation for a five year suspension); **Office of Disciplinary Counsel v. Lawrence T. Foti**, No. 89 DB 2001 (D. Bd. Rpt. 3/28/2003) (S. Ct. Order 7/24/2003) (three year suspension imposed for misappropriation of approximately \$33,000 in entrusted funds, **Braun** mitigation); **Office of Disciplinary Counsel v. Paul Robert Giba**, No. 52 DB 2003 (D. Bd. Rpt. 3/23/2005) (S. Ct. Order 6/16/2005) (two year suspension imposed for misappropriation of entrusted client funds in excess of \$100,000 over a three year period, mitigation included substantial family issues, psychiatric disorder, no record of discipline and compelling evidence of the respondent's excellent character from five attorneys); **Office of Disciplinary Counsel v. Ronald I. Kaplan**, 39 DB 2005 (D. Bd. Rpt. 4/4/2006) (S. Ct. Order 8/2/2006) (one year and one day suspension imposed for misappropriation of approximately \$9,000 and failure to maintain proper records, made partial restitution at the time of the hearing, **Braun** mitigation, the respondent-attorney demonstrated that he took remedial steps to address office administration problems, no prior discipline).

The Committee has recommended a four year suspension, with credit for Respondent's time on temporary suspension and the balance of the suspension stayed with probation. This recommendation would allow Respondent to practice law without the requirement of a reinstatement hearing. Pursuant to Disciplinary Board Rule § 89.291, probation is permissible if the respondent-attorney has demonstrated that he or she: can perform legal services and the continued practice of law will not cause the courts or profession to fall into disrepute; is unlikely to harm the public; and is not guilty of acts warranting disbarment.

In support of its recommendation, the Committee relied on cases where the Court has imposed probation on a respondent-attorney who misappropriated entrusted funds and established **Braun** mitigation. In comparing those cases to the instant matter, the Committee found that probation is warranted in this matter because “Respondent seemed to be back to the way he was prior to his dependency.” HC Rpt. p. 20. Further, “While there is a potential that Respondent could falter in his sobriety and treatment, [the Committee] is persuaded that, through the institution of the other recommended precautions, there will not be harm to the public at large nor to the reputation of the legal community.” HC Rpt. p. 21. In conclusion, the Committee stated, “It is our opinion that [Respondent] should be afforded the opportunity to continue to practice – albeit with close monitoring – in the *hopes* [emphasis added] that he will overcome his prior misconduct, and substance abuse, to serve the community.” *Id.*

The Committee is correct that probation has been imposed in matters involving misappropriation or misuse of client or law firm funds where the respondent-attorney established **Braun** mitigation. See **Office of Disciplinary Counsel v. Patrick Stephen Healy**, No. 68 DB 2017 (S. Ct. Order 6/22/2017) (consent discipline to four year suspension, stayed in its entirety, with four years of probation imposed on the respondent-attorney who submitted false claims to his law firm for work-related expense reimbursements totaling \$184,000, no client funds involved, **Braun** mitigation due to opioid addiction, respondent-attorney had been abstinent for three years prior to entering into consent discipline); **Office of Disciplinary Counsel v. John F. Mizner**, 46 DB 2007 (D. Bd. Rpt. 3/14/2008) (S. Ct. Order 8/29/2008) (five year suspension stayed in its entirety with probation for five years imposed on respondent-attorney who engaged in misappropriation of law firm funds by submitting false claims for travel expense

reimbursements in the amount of \$70,000, **Braun** mitigation established that the respondent suffered from an obsessive compulsive disorder that caused his misconduct, the respondent reimbursed the funds and self-reported his misconduct to the Disciplinary Board); **Office of Disciplinary Counsel v. Anonymous**, No. 18 DB 1999 (D. Bd. Rpt. 1/12/2000) (S. Ct. Order 12/14/2000) (four year suspension imposed with the suspension stayed in its entirety and four years of probation for misappropriation of entrusted funds in the amount of \$43,000 over a two year time frame, **Braun** mitigation, the respondent-attorney had been sober for two years at the time the disciplinary charges were brought).

In the cited matters, the determination to impose probation was made after considering the specific facts and weighing the harm to the public, which is a critical part of the analysis. It is our considered conclusion upon review of the probation criteria, the case law imposing probation, and the specific facts of the instant matter, that probation is not appropriate and an actual term of suspension is required, for the following reasons.

The record established that Respondent has suffered from psychiatric disorders for a significant portion of his life and at times received treatment for these disorders. During a time when he was not under the care of a medical provider for his depression and anxiety, Respondent became addicted to opioids and engaged in theft of client funds from his IOLTA account. By his own admission, Respondent has cycled in and out of inpatient and outpatient treatment programs over the course of 2017-2019 with periods of abstinence followed by periods of substance abuse. Respondent started treatment with Dr. Wright in April 2019 in yet another effort to treat his mental health and addiction issues, but struggled to stay sober. Respondent was arrested in June 2019 for drug-related offenses, was abstinent for a time, and by October 2019 had relapsed into

drug use. The timing of the October 2019 relapse occurred after the emergency suspension of Respondent's law license and the filing of the petition for discipline in this matter. Respondent marks his sobriety date as October 23, 2019.

Viewing this timeline, it is clear that Respondent's recovery is fairly recent, which distinguishes this matter from those probation matters cited above. When Respondent testified at the disciplinary hearing on March 12, 2020, he had been abstinent for less than five months. By the time of the second disciplinary hearing on July 7, 2020 at which Dr. Wright testified, Respondent had been abstinent from drug use for less than nine months. The record established, by way of Dr. Wright's and John D. Eddy's testimony, that the imposition of the emergency temporary suspension was very stressful for Respondent and in part precipitated his relapse to drug use. Respondent's latest period of abstinence has occurred while he has been suspended from practice, so he has not been faced with managing the stress of a law practice while simultaneously addressing his underlying mental health and addiction problems. Certainly Respondent's reaction to the temporary suspension leaves open the question of how he will react to the undeniable stresses of practicing law.

According to Respondent, he is compliant with his current treatment regimen, attends Alcoholics Anonymous and Narcotics Anonymous, and has the desire to stick with treatment. Other than his testimony that he believes he has his underlying problems under control and has considered practicing with other lawyers or having his father watch over his practice, Respondent failed to offer compelling evidence concerning concrete plans to resume the practice of law and his ability to handle stressful situations. Respondent's history of long-term mental health disorders, pattern of drug use and

relapses, as recently as October 2019, and the insufficient evidence concerning his plans to resume the practice of law, weigh against probation.

The Board's foremost responsibility is protecting the public from unfit attorneys, maintaining the integrity of the bar, and upholding respect for the legal system. ***Office of Disciplinary Counsel v. John Keller***, 506 A.2d 872, 875 (Pa. 1986). Bearing in mind that Respondent engaged in the egregious misappropriation of entrusted funds for his personal use, and based on Respondent past history of mental health and drug addiction and the recent vintage of his latest recovery period, we conclude the public may be imperiled by Respondent's return to the practice law at this juncture. We are not satisfied on this record that Respondent can provide legal services without harming the public. With all due respect to the Committee's thoughtful discussion, the Board and the Court require more than the "hope" that Respondent will overcome his mental health and addiction problems. Rather, it is our conclusion that Respondent must establish by clear and convincing evidence that he is fit to practice law; therefore a term of actual suspension triggering a reinstatement proceeding is required.

Viewing Respondent's misconduct in the spectrum of sanctions meted out in the cited cases, we conclude that the appropriate discipline is a suspension for three years, retroactive to the date of Respondent's emergency temporary suspension. This recommendation accounts for the egregious nature of Respondent's breach of trust, balanced against the mitigation of Respondent's mental disorder, genuine expressions of remorse and acceptance of personal responsibility, lack of prior discipline and character evidence.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, John William Eddy, be Suspended for three years from the practice of law, retroactive to the order of emergency temporary suspension entered on September 6, 2019.

It is further recommended that the expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: David S. Senoff
David S. Senoff, Member

Date: 3/24/2021

Member Miller recused.